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ABSTRACT

This report contains 4 addresses given at a conference on higher education and the law in Tuscaloosa, Alabama, and includes 2 supporting documents. The first address: "An Overview of the Interaction," by Richard A. Thigpen, discusses: (1) how constitutional standards are made applicable to public and private institutions of higher education; (2) student rights and responsibilities; (3) the legal relationship of the faculty to the institution; and (4) administrative discretion. The 2nd address: "Student Rights and Responsibilities," by D. Parker Young, deals with the legal setting as related to campus life, and the issue of due process for students. The 3rd address: "A Trustee's View of Student Unrest and the College Community," by Henry L. Bowden, deals with the concerns, experiences, and reactions of the trustees of Emory University in Atlanta. The last address: "Remedies for Student Protest," by Fred D. Gray, discusses 5 actions that can be taken to cope with protest: (1) the injunctive process; (2) suits by taxpayers and students not participating in the unrest; (3) arrest; (4) state and federal legislation; and (5) status quo remedies. The 2 documents included are: (1) A Statement of Policy Relative to Dissent Adopted by the Board of Trustees and President of Emory University; and (2) a selected bibliography on instutitional governance and campus unrest. (AF)

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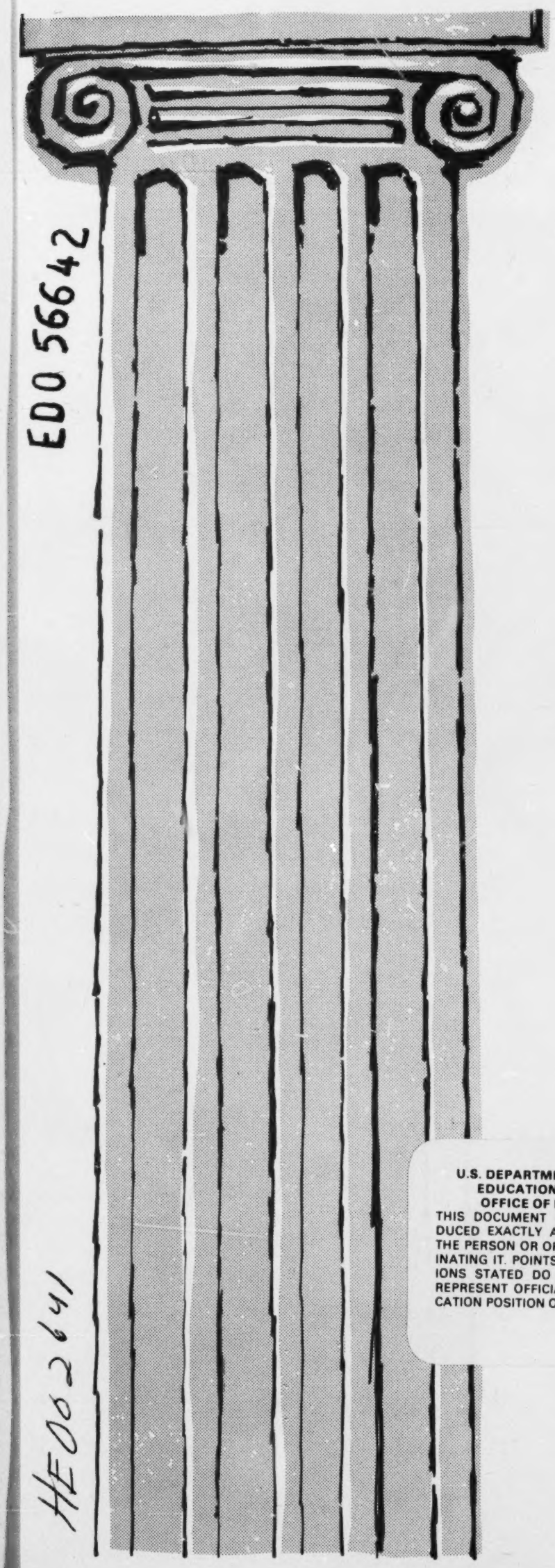

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THE LAW AND HIGHER EDUCATION: WHERE THE ACTION IS!

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THE UNIVERSITY OF ALABAMA

THE LAW AND HIGHER EDUCATION:

Where the Action Is!

THOMAS J. DIENER
EDITOR

Proceedings of a Conference
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FOREWORD

The tranquil days of higher education, if they ever existed, certainly do no longer.

A recent report of the Carnegie Commission on Higher Education, "Dissent and Disruption" brings the reality of the 1970s sharply into focus. The Kent and Jackson States, the Columbias and Berkeleys--these and many situations like them have brought about an interaction between courts and colleges not imaginable a few short years ago.

Students, professors, administrators, trustees--none are immune from the upheaval of our campuses. Nor can the clock be turned back; the turmoil of our society continues to break through the ivy covered walls of academe bringing with it new expressions and forms of power, jostling traditions and opinions of long standing.

The courts are one of many new forms of power now active in the life of higher education. They, as never before, are a significant force in the administration of the affairs of a college.

The Institute of Higher Education Research and Services of The University of Alabama is to be sensitive and responsive to trends and issues in post-secondary education. Aware that many leaders in colleges and universities in the State of Alabama and the Southeast were concerned, often puzzled, by court actions, the Institute planned and sponsored a conference on higher education and the law March 29, 1971.

Addressed especially to faculty members, administrators, and trustees, the conference was designed to bring together persons with leadership responsibilities in higher education institutions in the South with a number of knowledgeable and experienced resource persons. Together they shared ideas, attitudes, strategies.

Published here are the four addresses given at the conference and two of the supporting documents. The Institute is pleased to present these informative materials for the use of an audience beyond the conference participants.

Thomas J. Diener
University, Alabama
April, 1971

Courts and Colleges:

AN OVERVIEW OF THE INTERACTION

RICHARD A. THIGPEN is Executive Assistant to the President and Lecturer in Law, The University of Alabama, University, Alabama.

He is a member of the Alabama State Bar Association and the American Bar Association. Born in Birmingham, Alabama, Mr. Thigpen received his undergraduate degree in history and political science from The University of Alabama as well as a master's degree in history, a J.D. degree from the School of Law. He holds the L.L.M. from Yale University Law School. He is a member of the National Association of College and University Attorneys and the National Association of Student Personnel Administrators.

In this paper Mr. Thigpen explores the rapidly expanding intervention of the courts in the life and practices of colleges and universities.

I appreciate this opportunity to meet with colleagues and friends from other institutions and to share with you some thoughts on the ways in which various facets of higher education are becoming subject to legal process. While this is the first conference of its kind to be sponsored by The University of Alabama, it is by no means our first experience with the law governing rights and responsibilities of those in the academic community.

Like other universities, we are finding that many of the central issues affecting higher education today involve questions of legal rights and obligations. Though this seems a sad commentary on institutions which have historically devoted themselves to learning and the pursuit of truth, it would be unrealistic for me to predict any foreseeable change in the current trend towards "legalism" in the academic community.

I. HOW CONSTITUTIONAL NORMS ARE APPLIED TO INSTITUTIONS--THE COMPARATIVE LEGAL POSITION OF PRIVATE AND PUBLIC UNIVERSITIES

I want to begin my remarks with a discussion of how constitutional standards are made applicable to institutions, both in the public and the private sector. For those of you who may be trained in the law, I will first apologize for taking your time with something which may seem quite elementary, from a legal standpoint. However, since there are representatives of private and public universities in attendance, and since the standards applied to the two groups may be quite different, I thought a brief view of this question might be beneficial.

We hear a great deal of discussion about the constitutional rights which we (students, faculty, administrators) enjoy as members of the academic community. The fervor of the discussion often seems to suggest that we are considering rights which are "inalienable" and which naturally accompany the status of faculty or student.

To the contrary, however, constitutional rights do not exist in the abstract, nor (as respects institutional action) are they guaranteed to <u>all</u> members of <u>every</u> university community. They are protections, instead, against certain types of action by the state or federal government. The Fourteenth Amendment, with which we are most directly concerned, provides that:

> No state shall...deprive any person of life, liberty, or property without due process of law; nor deny to any person..., the equal protection of the laws.[1]

Thus, if any institution is "private," so that it cannot be classified as an arm of the state, a person (technically) has no legal basis for claiming that a constitutional right has been abridged. Moreover, it was not until 1961 (in the famous <u>Dixon</u> Case[2]) that the courts clearly stated that

public universities were within the coverage of the Fourteenth Amendment and its requirements for due process.

Nevertheless, the courts have developed several theories whereby constitutional restraints might be extended to private institutions. One such theory is the "public responsibility doctrine," under which it is argued that organizations which operate with the consent of government, such as labor unions, [3] corporations, [4] public utilities, [5] and places of public accommodation, [6] should be subject to the same constitutional restrictions as state agencies. If the courts were to adopt this view, there can be little doubt but that private institutions of higher learning, which are chartered by state government (either through specific legislative act or by a corporate charter), would be held accountable under the Fourteenth Amendment.

A second theory--the judicial enforcement doctrine--was recently invoked by a federal court in a case involving Sweetbriar Institute. [7] Under this theory, a private institution forfeits its immunity from the Fourteenth Amendment when it seeks to enforce a regulation or agreement in a court of law. In the Sweetbriar case, the court was asked to rule on the constitutionality of a segregation clause in the trust setting up the college. Though the court stated that the clause was perfectly valid among the parties affected by a trust agreement, it held that "the state cannot require compliance with the testamentary restriction because that would constitute state action barred by the Fourteenth Amendment." [8]

It can also be argued that Fourteenth Amendment standards are applicable when private institutions perform governmental functions. There have been a number of cases in recent years, in which groups such as political parties, [9] company towns, [10] and parks [11] have been all held subject to Fourteenth Amendment restraints because they performed what were essentially "governmental" functions. Certainly, it can be argued that a school--no less than a park--performs a governmental function, and many would say that in a democratic society, education is one of the most essential governmental enterprises. [12]

A fourth approach is to find state action by looking to the extent of governmental involvement in a private institution. Under this view, otherwise private institutions are said to be subject to the Fourteenth Amendment if there is a "significant amount" of state involvement in their affairs. [13] In one recent case, involving Aldred University in New York, a federal court seemed to imply that where a "private" institution received 100% state funding for one of its branches, then the action of that branch could be considered "state action" within the Fourteenth Amendment. [14] Since it was state financing and control which first brought public colleges within the reach of the Fourteenth Amendment, one might predict that, given a sufficient amount of state participation, private institutions would necessarily be held to the same standards as other government instrumentalities.

There is still another theory, but it--unlike the others--challenges the general view that the Fourteenth Amendment is a negative provision, protecting persons only against state action. Under this theory (often referred to as the theory of permissive norms), it is argued that there are certain fundamental freedoms which the state must guarantee to all citizens, and which it cannot permit any institution--public or private--to impinge upon. [15]

To date, the courts have shown no inclination to accept this view, nor have they been inclined (in most instances) to apply any of the other doctrines to private institutions of learning. However, as the lines between the public and private sector become less-and-less clear, it is reasonable to predict that the actions of otherwise-private institutions will be subject to increasing judicial scrutiny.

II. STUDENT RIGHTS AND RESPONSIBILITIES

If we assume, than, that we are dealing with public institutions, where the Fourteenth Amendment now is clearly applicable, or with private institutions where it may be applicable through one of the preceding theories, we then can consider the extent to which these constitutional safeguards affect various constituencies within the university community. The questions with which we are most concerned, of course, relate to student rights and responsibilities. I will limit my discussion to an overview of the various theories of the student's legal relationship with the institution.

The oldest, and most familiar theory is the much-discussed concept of in loco parentis. Under this view, the institution is considered to occupy an intermediate role as a parent, making its own rules and administering its own "special" codes of conduct. [16] The concept was perhaps best illustrated in the landmark case of Gott v. Berea College in 1913, where the courts upheld a college regulation forbidding students to patronize a local tavern. [17] The case has a contemporary tone, since one of the reasons the institution used for promulgating the regulation was that the college had an obligation to support its own food service first, and could not afford to allow students to patronize Mr. Gott's establishment.

A second view of the student relationship is the so-called contract theory. Under this view, the student is assumed to have accepted the institution's offer of certain educational services in return for his promise to pay the fees and to abide by the institution's regulations. Accordingly, if the student breaches his contract, by failing to observe the school's regulations, the institution is considered justified in rescinding the contract by an expulsion of the student.

For many years, the leading case in this area was Anthony v. Syracuse University, where a female student was suspended for not "being a typical Syracuse girl." [18] In the more recent case of Carr v. St. John's University, the courts upheld the suspension by that Catholic University of two students who married in a civil ceremony, on the grounds that they had breached their contract to "abide by the principles of christendom," which were required of all St. John's students. [19]

While there are obvious difficulties in comparing the so-called educational "contract" with other types of commercial agreements, the courts nonetheless have viewed the doctrine rather sympathetically, and it stands today as the major basis of discipline in our private colleges and universities.

I might add, though, that the courts also have made it clear that, in the case of public institutions, a student may not be required to contract away any constitutional prerogatives he otherwise enjoys as a condition of admission to a state college or university. [20]

The view of the student's relationship which attracts most interest today, however, is the so-called "student as a citizen" theory. Under this view, the student is considered to have the same rights and prerogatives against an institution of higher learning, as would a citizen against another instrumentality of government.

The doctrine was given birth in 1961 when, in the famous case of Dixon v. Alabama, the Fifth Circuit Court of Appeals held that an institution may not suspend a student without affording him the rudimentary elements of due process, including a hearing and appropriate notice. [21] Just two years ago the Supreme Court of the United States (hearing a student discipline case for the first time in many years) endorsed this view in the famous decision of Tinker v. Des Moines Independent Community School District. [22]

In reviewing the more recent case of Esteban v. Missouri State

College the high court shed some doubt on whether the "student as a citizen" view can be applied in all situations. [23] There, in refusing to grant certiorari to a decision of the Eighth Circuit Court of Appeals, the court upheld the view that the criminal law standards of vagueness are not applicable to institutions of higher learning. Hence, although we hear much of the demise of in loco parentis and the coming of the "student as a citizen" view, there still remains some question as to whether the relation of an educational institution with its students is the same as the relationship between a state agency and a private citizen.

Assuming that the in loco parentis doctrine is no longer a viable "legal" concept, I would argue that it is--as a practical matter--very much with us all today. Society has--and probably will continue--to accord the colleges and universities an extraordinary deal of autonomy in the administration of their internal affairs, especially as respects the administration of law and discipline on campus. We must recognize, though, that this semi-autonomous status is not something which institutions enjoy as a matter of legal right. Quite to the contrary, law enforcement agencies at every level have jurisdiction on the campuses of our colleges and universities, and they have no legal obligation to defer to the judgments of institutional officials on matters within their jurisdiction. [24]

What we have had in practice then, is an extended version of the traditional in loco parentis concept. Society has deferred to the judgment of colleges and universities on the assumption that the institutions would exercise responsibility in the administration of discipline within the campus community.

While I would not advocate that we slow the extension of constitutional guarantees within the educational community, I would suggest that we who cherish the concept of "academic freedom" might re-examine the merits of treating the university as another state agency, with students in the same relationship as they would be with local and state authorities. Until we reach this point, I do not believe that we will have effectively abandoned the time-honored concept of in loco parentis.

III. FACULTY STATUS

Having examined the relationship of the student to the institution, I would like to turn for a moment to the question of the faculty and its legal relationship to the institution of higher learning. In its simplest terms, the faculty's relationship is a contractual relationship, arising from his contract of employment with the institution. Technically, then, any action of the institution which affects the faculty should be based on the terms--express or implied--of that contract.

Although the usual duration of a faculty contract is one year, provision usually is made for a faculty member to obtain "continuing" contract status through a system of tenure. Under such circumstances, the faculty's status is still governed by the contract, though in most institutions a condition is added that the faculty relationship cannot be terminated except for "just cause." [25] In some states this continuing contract status is a matter of law, [26] established through an enactment by the state legislature. In most cases, tenure is written into the contract through a resolution of the board of trustees or an administrative regulation. [27] In other cases, it is merely a matter of custom. [28]

Non-tenured faculty, however, have not had the benefit of such protection. Institutions have, historically, had the right to summarily conclude an employee's relationship, without cause, at the end of the contractual period. [29] In recent years, this question has been increasingly subject to dispute, on the grounds that non-tenured faculty are entitled to certain procedural safeguards before being dismissed from the institution.

This view gained support recently in the case of Sindermann v. Perry, where a federal district court held that even a non-tenured professor was entitled to the basic elements of due process before being dismissed or having his contract terminated. [30] The case is now in the Supreme Court of the United States, and promises to be a

landmark decision, despite how it is decided. If the lower court ruling is upheld, then institutions will probably be obliged to assure non-tenured faculty essentially the same rights as they do to those who have obtained tenure.

Before leaving the question of faculty rights and responsibilities, I should also touch upon the recent interest of faculty in collective organization and bargaining. Let me say first, that under the National Labor Relations Act, state agencies are excluded from the collective bargaining provisions, so that there is little possibility that tax-supported institutions will be brought under NLRB jurisdiction within the foreseeable future. [31] On the other hand, you are probably all aware of the recent Cornell University case, in which the NLRB assumed jurisdiction over faculty who were attempting to organize themselves, on the grounds that the institution is involved in interstate commerce. [32] If this precedent is followed, it stands to reason that faculty in private institutions all over the country will be in a position to seek rights similar to those of other union employees.

Despite the inapplicability of the federal labor laws, I think we also can predict increasing interest in faculty organization at public institutions of higher learning. There already has been considerable labor union activity under various state laws, and in New York, Wisconsin, and Michigan faculty groups have organized themselves into bargaining units and received recognition. [33]

It is difficult, of course, to predict a trend in this area, since the AAUP and other organizations have traditionally resisted the labor union approach, noting that they were professional employees and that union organization is incompatible with a professional employment relationship. [34] Yet, from a legal standpoint, we can predict that the law governing unionization in public universities will become increasingly permissive, and that the faculty will find avenues open if they are interested in organizing to bargain collectively.

I might point to one practical problem if this should come to pass. Unlike private industry and business, institutions of learning have no authority to commit resources in the future, and this is an absolute necessity when one sits down at the bargaining table to negotiate an employment contract. The inability to commit a state legislature, or for that matter a statewide board of trustees, in advance will certainly be a serious practical obstacle to the development of faculty organization and collective bargaining among state universities.

IV. ADMINISTRATIVE DISCRETION

Having surveyed the question of student and faculty rights, I should re-emphasize that courts still tend to defer a great deal to the judgment of institutions, and in a court battle, presumptions tend to be in favor of the regulations and practices of the college or university. The burden on the institution is to show that the action it took was pursuant to a "lawful mission" of the institution.

There are numerous topics which one could deal with in a treatment of the legal parameters of administrative discretion. We could discuss, for example, the control of campus speakers, censorship of the student newspaper, parietal rules, mandatory ROTC and physical examinations, assessment of student activity fees, maintenance of order on campus, regulation of student organizations, student records, personal appearance, search and seizure, drugs and alcohol, and a host of other questions. However, since most of these questions relate to the regulation of student activity, on which Dr. Parker Young is to make a detailed presentation, I will refrain from any specific discussion of these topics. You may, of course, have questions in the period to follow, and if that is the case, I will be delighted to respond as best I can.

Otherwise, it suffices to say that despite what seem to be increasingly restrictive rulings by the courts,

institutions do have a great deal of discretion and responsibility, where they predicate their actions on a lawful educational mission of the institution.

V. CONCLUSION

Before I conclude, there are two other areas which I might mention briefly. The first involves the legal status of our accrediting agencies which, as you may know, have been under increasing fire within recent years. In the most recent litigation, a federal circuit court overturned a lower court ruling which would have held the North Central States Accrediting Association subject to the federal anti-trust laws. [35] In that case, Marjorie Webster Junior College was excluded from the accrediting group on the basis of its profit making activity. The college sued the agency on the grounds that this was a "restraint on trade," and won in the lower court. Although the Supreme Court has refused to grant certiorari to the Circuit Court's decision, the fact that the litigation occurred may suggest that the activities of accrediting agencies will be brought under increasing judicial scrutiny in the future.

Another area in which most of you may have a profound interest involves federal and state legislation relating to campus disorders. I should note first that in past years, three major pieces of legislation were prepared in the Congress which would directly involve the federal government in the control of campus unrest. [36] Although all three were tabled temporarily, members of the new Congress are showing renewed interest in federal legislation affecting the campus, and three new bills recently were placed in the hopper. [37] While the bills are not being actively pushed, it is possible that, given sufficient provocation on campus, the Congress might be inclined to act on the measures.

State legislatures, on the other hand, have not been timid in asserting their prerogatives in the control of campus unrest. In the last two years, for example, some thirty-four states have passed legislation dealing with the conduct of students in regard to campus unrest. Those new laws have a general affect of affirming the authority of local and state law enforcement agencies over the conduct of those in the campus community. In some cases, the legislation has gone so far as to require that institutions immediately establish codes of specific behavior for their students.

It is too early yet to say what will be the long-range effects of such legislation. However, it would seem from past history that legislation and other externally-imposed remedies offer no lasting solution to today's campus difficulties. Perhaps what we can hope for, instead, is that our institutions will be able to demonstrate to the law-makers--and through them to society as a whole--that they still have the capacity to handle their internal affairs.

If we succeed in this, then I believe we can have a legal order which preserves the integrity of our institutions and, at the same time, insures the rights of all groups within the campus community.

REFERENCES

1. U.S. Constitution, Amendment XIV.

2. Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. cert. den. 368 U.S. 930 (1961).

3. American Communications Association v. Douds, 339 U.S. 382 (1950); Steel v. Louisville and Nashville R.R. Company, 323 U.S. 192 (1944); "Individual Rights in Industrial Self Government--A State Action Analysis," 62 Northwestern L. Rev. 10 (1968).

4. Berle, "Constitutional Limitations on Corporate Activity--Protection of Personal Rights From Invasion Through Economic Power," 100 U. Pa. L. Rev. 933 (1952); Hale, "Force and the State: A Comparison of Political and Economic Compulsion," 35 Col. L. Rev. 149 (1935); Dorsey v. Stuyvesant Town Corp., 299 N.Y. 512, 87 N.E. 2d 541 (1949), cert. den. 339 U.S. 981 (1950).

5. Public Utility Co. v. Pollak, 343 U.S. 451 (1952).

6. The doctrine first was enunciated by Justice Harlan in a dissent in the famous Civil Rights Cases, 109 U.S. 3 (1883), involving charges of alleged discrimination under the public accommodations section of the 1875 Civil Rights Act.

7. Sweet Briar Institute v. Button, 280 F. Supp. 312 (W.D. Vir. 1967); Also see William Marsh Rice University v. Carr, 9 Race Rel. L. Rep. 613 (Harris Cy. Tex. Dist. Ct. 1964), aff'd. sub. nom.; Coffee, v. William Marsh Rice University 408 S.W. 2d 269 (Texas Civ. App. 1966).

8. 280 F. Supp. 312 (W.D. Vir. 1967).

9. Smith v. Allwright, 321 U.S. 649 (1944); U.S. v. Classic, 313 U.S. 299 (1941).

10. Marsh v. Alabama, 326 U.S. 501 (1946).

11. Evans v. Newton, 382 U.S. 296 (1966).

12. The doctrine gained some support in the recent case of Belk v. Washington University, No. 70 C 151 (1) (E.D. Mo. Nov. 25, 1970). Also see Guillory v. Administrators of Tulane University, 293 F. Supp. 855, where Judge Skelly Wright applied the government function doctrine to Tulane University, only to have his decision later vacated on technical grounds. 212 F. Supp. 674 (E.D. La. 1962).

13. Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

14. Powe v. Miles, 407 F. 2d 73 (2d Cir. 1969).

15. See Harlan's dissent in the Civil Rights Cases, 109 U.S. 3-46 (1883) and Goldberg's concurring opinion in Bell v. Maryland, 378 U.S. 226 (1964). Also consult Frank and Monroe, "The Original Understanding of Equal Protection of Laws," 50 Col. L. Rev. 131 (1950).

16. Harms, The Concept of In Loco Parentis in Higher Education, (1969).

17. 156 Ky. 375, 161 S.W. 204 (1913).

18. 130 Misc. 249, 233 N.Y. Supp. 796, rev'd., 224 App. Div. 487, 231 N.Y. Supp. 435 (1928).

19. 34 Misc. 2d 319, 231 N.Y.S. 2d 403, rev'd, 17 App. Div. 2d 632, 231 N.Y.S. 2d 410, aff'd mem., 12 N.Y. 2d 802, 235 N.Y.S. 2d 834 (1962).

20. Dickey v. Alabama State Board of Education, 273 F. Supp. 618 (M.D. Ala. 1967); Van Alstyne, "Judicial Trend Toward Student Academic Freedom," 20 U. Fla. L. Rev. 290, 301 (1968).

(References continued)

21. 284 F. 2d 150 (5th Cir.) cert. den. 268 U.S. 930 (1961).

22. 393 U.S. 503 (1969).

23. 415 F. 2d 1077 (8th Cir. 1969), cert. den. 90 S. Ct. 2169 (1970).

24. In Re Bacon, 49 Cal. Rptr. 322 (1966).

25. "Just Cause" may include moral turpitude, gross incompetency, rank insubordination, immorality, or felony. See Byse and Joughlin, Tenure in American Higher Education: Plans, Practices, and the Law (Ithaca, N.Y.: Cornell University Press, 1959).

26. In Alabama and in other states, there are state tenure statutes governing teachers in the elementary and secondary schools. See Code of Alabama, (Recompiled, 1958) Chapter 13 A.

27. In most colleges and universities, teachers may qualify for tenure after a certain number of probationary years or after they have attained a certain rank, such as associate professor. See Byse, at 9 and 10.

28. See F. Machlup, "In Defense of Academic Tenure," AAUP Bulletin (Summer 1964).

29. Frankt, "Non-tenure Teachers and the Constitution," 18 Kansas Law Rev. 17 (1969).

30. 430 F. 2d 852 (5th Cir. 1970), pet. for cert. filed, 39 USLW 3215 (1970).

31. "States" are excluded from the definition of "employer" in Section 2 (1) of the National Labor Relations Act. 29 U.S.C.A. § 141 et. sec.

32. Cornell University and Association of Cornell Employers--Libraries, 183 NLRB No. 41, Case No. 3-RM-442 (1970).

33. McHugh, "Recent Developments in Collective Bargaining in Higher Education," The College Counsel, Vol. V, No. 1 (1970) p. 159.

34. See "Faculty Participation in Strikes," AAUP Bulletin (Summer 1965) pp. 155, 157.

35. Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools, Inc. 302 F. Supp. 459 (D.D.C. 1969) reversed at 432 F. 2d 650 (D.C. Cir., 6-30-70).

36. The bills were filed by Senator Byrd of West Virginia, Senator Thurmond of South Carolina, and Congresswoman Edith Green of Oregon.

37. The new bills were filed by Senator McClellan of Arkansas, Rep. Robert Sikes of Florida, Rep. John Rarick of Louisiana, and Rep. Carleton King of New York. For a report, see the newsletter of the National Association of State Universities and Land Grant Colleges (March 24, 1971).

Courts and Colleges:

STUDENT RIGHTS AND RESPONSIBILITIES

D. PARKER YOUNG is Assistant Professor of Higher Education, Institute of Higher Education, The University of Georgia, Athens, Georgia.

Dr. Young holds degrees from Erskine College (B.A.), Appalachian State University (M.A.), and The University of Georgia (Ed.D.). He has been a high school teacher, guidance director, and principal, a college teacher, researcher, administrator. He has written extensively in the area of the law and its impact on both public and higher education. He writes a continuing review of federal and state court cases affecting colleges and universities for the SCHOOL LAW REPORTER, quarterly publication of the National Organization on Legal Problems of Education.

Dr. Young here reviews the rights and responsibilities of students, emphasizing the implications of procedural due process.

No one has to tell you that we are living in an age of protest that now seems to be focused around our educational institutions in America. Of course it is not all taking place on the campuses of our educational institutions but certainly much of it is spawned and nurtured within the sphere of those confines. It seems that many other groups have jumped onto that bandwagon of protesting through civil disobedience and other tactics in demanding that their desires be granted.

Nurses, firemen, policemen, other government workers, labor unions, even teachers and professors have resorted to such protest and demands and have ignored laws, even court orders, by their actions. The examples of protest and successes scored by these groups here, in my opinion, had no small part in the degree of protest by students.

Our system of government in this country is one which fosters dissent. The open forum is an absolute necessity for individual freedom. But so long as the means for change, even total change, exists within the system, then there can be no tolerance for lawlessness and violence.

Our educational institutions bear a tremendous burden in the maintenance of freedom not only within those institutions but throughout our society as well.

Administrator Responsibiltiy

You as administrators in these institutions have an increasing responsibility to help maintain the integrity of that institution--that free marketplace of ideas. And yet you have the opportunity to help shape and create the atmosphere in that institution so that each individual may progress to the fullest extent of his capacity and potential. If you can and will do this in these times of great travail, then history will accord you special honor. There is no task more important today than yours--not only as it applies to your institution but for our total society.

The militant students' demands on the one hand call for a restructuring of society, and the relief they seek cannot be afforded them by a single educational institution. They would restructure society based on so called freedoms but make no mistake, for the most part the end result is anarchy. For the educational institution it means the abandonment of the free marketplace of ideas and its replacement by a politicized institution.

In the absence of an extreme emergency, a society which allows the free marketplace of ideas to be intimidated and closed by a few bent upon destruction of that free marketplace is a society that has lost its perspective and its will to maintain real freedom for all. That society will soon reap an ever increasing harvest of further destruction of its institutions.

The majority of American citizens reject these impending circumstances. They will not support a politicized educational institution nor will they tolerate such.

A good many American citizens already are convinced that many professors and teachers are the root causes of so much campus unrest. Congresswoman Edith Green, Chairman of a special subcommittee on education, and a great friend of education, after over four months of hearings on campus unrest, is quoted as saying that she is convinced there would be no campus riots if it were not for some faculty members. And a good many administrators are certain that when the going gets rough, the faculty has and will continue to "cop out" and abdicate their responsibility for helping to maintain the free marketplace of ideas.

I think it is imperative that all participants in this enterprise of education--trustees, school board members, administrators, faculty, students, and the general public--understand the legal parameters within which each must operate. So what is the legal setting in which education finds itself today with respect to student rights and responsibilities?

I. THE LEGAL SETTING

Courts have consistently ruled that educational institutions have an inherent authority to maintain order and freedom on the campus and to discipline, suspend, and expel students whose conduct is disruptive. Both Federal and State Courts have stated this fact.

The Eighth Court of Appeals in Esteban v. Central Missouri State College affirmed this inherent authority; this case was appealed to the United States Supreme Court and that Court refused to hear the case, thus upholding the lower court's decision. I would like to quote from that decision:

> We do hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct. [1]

It is of some significance to note that this decision was written by Justice Blackmun, now a member of the United States Supreme Court.

Order and Freedom

Courts have also stated that it is a duty on the part of administrators to maintain order and freedom on campus and this applies to non-students as well as student. .[2]

This is not to say that the student is forbidden to express his beliefs or opinions or to attempt to bring about change concerning the institution. He may attempt to bring about change, but he has the responsibility to pursue change through the proper channels and procedures. The institution has the responsibility to see that the standards are consistent with the lawful purposes of the institution and that the process of change through proper channels and procedures is reasonably effective.

But students do have rights and are free to openly and freely exercise those rights. They have the same status as adults insofar as constitutional guarantees are concerned; that is, they do not leave their constitutional guarantees at the campus gate, nor do they acquire special privilege.

Now what, specifically, are some of their rights?

Students have the right to demonstrate so long as they do not substantially interfere with the on-going activities of the institution, nor interfere with the rights of others, nor engage in the destruction of property. This was the standard or test laid down by the United States Supreme Court in Tinker v. Des Moines Independent County School District.[3]

In attempting to curb student demonstrations the burden is upon the institution to show that the actions of the students are indeed unlawful in that they materially disrupt the on-going activities of the institution or that they

interfere with the rights of others or that they are destructive of property.

Just exactly what speech or what assembly is guaranteed is debatable. There is no absolute freedom of speech as Justice Holmes so well pointed out when he said:

> The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [4]

Also, there is no absolute freedom of assembly.

There can be no blanket prior restraint on speech or assembly in institutions of higher education. [5] The circumstances surrounding each case dictate the extent to which speech and assembly are protected. In Bayless v. Martine the Fifth Circuit Court of Appeals held that a campus rule which regulates the time and place of demonstrations, with a 48 hour reservation requirement, does not on its face violate First Amendment rights nor does it constitute a prior restraint upon such rights. [6]

It has been held that students have the right to assemble at college or university buildings but that they have no right to exclude others from free movement in the area or building. [7]

Lawful Demonstration

Students have the right to plan or participate in a lawful demonstration. The fact that the demonstration may subsequently become violent and destructive does not on its face condemn the students. Additional substantive evidence must be present showing that the students personally became violent and destroyed school property in order that disciplinary action may be justified. [8]

Students do not have the right to participate in mass gatherings which are considered unlawful and to claim constitutional protection against disciplinary action taken as a result of such participation.

It is a privilege for a student organization to be granted official recognition on campus. I would like to quote from the very recent 1970 case, Healy v. James in which the refusal to officially recognize a local chapter of SDS was upheld:

> No student group is entitled, per se, to official college recognition. Rather, once a college allows student groups to organize and grants these groups recognition, with the attendant advantages, constitutional safeguards must operate in favor of all groups that apply. This requires adequate [illegible]ards for recognition and the fair application of these standards. [9]

The California Court of Appeals held that public disclosure of the names of the officers and the stated purposes of a registered student organization did not constitute an indirect infringement of constitutional rights. [10]

Educational administrators may not exercise censorship of student newspapers. [11] Restraint of censorship has recently been extended to apply to those newspapers which may be aided financially by the state. [12] Another recent decision has held that a campus newspaper may not refuse to accept editorial advertisements while accepting those of a commercial and public service nature. [13] It is clear that the right to express views may not be restricted unless there is a "clear and present danger" to society. The burden of proof is upon the institution to show the existence of such a danger. [14]

Campus Speakers

In order to be valid, a regulation restricting campus speakers must, in objective language, preclude only that speech subject to being forbidden under the doctrine of "clear and present danger." Again the burden of proof is upon the institution to show the existence of a "clear and present danger." [15]

College and university rules regulating certain modes of dress, certain hair styles (including length), and beards have been held in violation of equal protection in the absence of a relationship to the health, welfare, morale, or discipline of any student. [16, 17]

Students have the right to be free from unreasonable searches and seizures in dormitory rooms, student lockers, and the like. Unless an emergency situation exists it is probably wise to obtain a search warrant. However, when there is "reasonable cause to believe" that danger is present, then reasonable searches may be conducted without a warrant. [18, 19, 20] An example of such circumstances would be that of a bomb threat.

As administrators and faculty have an obligation and a responsibility to maintain freedom on campus, so too do students in addition to their rights take on responsibilities. Again I'd like to quote Justice Blackmun in his opinion in the Esteban case.

> College attendance, whether it be a right or a privilege, very definitely entails responsibility. This is fundamental. It rests upon the fact that the student is approaching maturity. His elementary and secondary education is behind him. He already knows, or should know, the basics of decent conduct, of nonviolence, and of respect for rights of others. He already knows, or should know, that destruction of property, threats to others, frightening passersby, and intrusions upon their rights of travel are unacceptable, if not illegal, and are not worthy of one who would pursue knowledge at the college level.
>
> These plaintiffs are no longer children. While they may have been minors, they were beyond the age of 18. Their days of accomplishing ends and status by force are at an end. It was time they assumed at least the outward appearance of adulthood and of manhood. The mass denial of rights of others is irresponsible and childish. So is the defiance of proper college administrative authority... and being a part of the proscribed college peace-disturbing and property-destroying demonstration. One might expect this from a spoiled child of tender years. One rightly does not expect it from the college student who has had two decades of life and who, in theory, is close to being "grown up."

II. DUE PROCESS

The Fifth Amendment to the United States Constitution states that "No person... shall be deprived of life, liberty, or property, without due process of law..." This amendment applies to the Federal Government. The Fourteenth Amendment to the Federal Constitution applies to the states and reads: "...nor shall any State deprive any person of life, liberty, or property without due process of law...."

Definition of Due Process

There is no absolute and final definition of due process of law. Courts have refused to formulate a precise definition and have preferred to define it "by the gradual process of judicial inclusion and exclusion."[21] In general it may be said that due process is met when the principles of fair play are invoked and when actions are reasonable, just, and not arbitrary.

There are two kinds of due process--procedural and substantive. Procedural due process refers to the procedures and methods employed in seeing that laws and regulations are carried out and enforced.

Substantive due process goes to the very heart of the law or regulation in question. It questions not merely the procedures and methods employed in any proceeding, but whether the purpose of the law or regulation is fair, reasonable, and just.

History of the Due Process Approach in Student Disciplinary Proceedings

Student disciplinary proceedings have been held to be civil and not criminal proceedings and therefore do not necessarily require all of the judicial safeguards and rights accorded to criminal proceedings.

In 1961 a landmark decision in the area of due process and student disciplinary prodeedings in public higher education was handed down in Dixon v. Alabama State Board of Education. [22] In that particular case the Court upheld the contention that adequate notice and hearing must be afforded a student prior to expulsion or long term suspension. Since that historic case, the courts have weighed the merits of each case to determine due process and have used the gradual process of "judicial inclusion and exclusion" to make that determination.

Specificity of Rules

Although it is impossible to cover every conceivable situation in a set of rules pertaining to students, due process requires that there should not be undue vagueness or overbreadth in the rules governing students. The degree of specificity of the rules will, of course, vary. Colleges and universities have not been required to have specific rules and regulations to the extent necessary in criminal statutes. However, "misconduct" as a standard for disciplinary action has been held unduly vague and overboard. [23]

The Federal Court in Scott v. Alabama State Board of Education seemed to set forth the general standard in this area. [24] That standard is that the degree of specificity required is that which allows a student to adequately prepare a defense against the charge.

Notice

In any serious case of student discipline where the penalty may range from extended suspension to expulsion, due process requires that the student be given proper notice and opportunity for a hearing. In general it may be said that a student must be given, at a time reasonably prior to the proceedings, a written statement in which the charges are explicitly set forth as well as the specific ground or grounds which, if proven, would justify the penalty under the lawful regulations. Included in the notice should be the names of the witnesses who will testify against him and the facts to which each witness testifies.

It should be stressed that proper notice may vary with each case. The element of fair play does dictate, however, that the student know, in advance of the proceedings, what he is being charged with and the grounds upon which the charges are based. Also, the possible punishment or penalty should be included in the notice.

A student cannot frustrate the notice process by failure to keep the institution informed of change of address and by subsequent failure to actually receive the notice. Nothing more is required of college officials than that their best efforts be employed to give written notice. [25]

Hearing

What constitutes a hearing in disciplinary cases may vary with the circumstances of each case. In Dixon v. Alabama State Board of Education the Court said:

> The nature of the hearing should vary depending upon the circumstances of the particular case... By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses. In such circumstances, a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required. Such a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the

college's educational atmosphere and impractical to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interest of the college.

Since courts have allowed flexibility in disciplinary hearings held by college officials, there has been no requirement that these hearings must be "public."[26]

The hearing need not be allowed to degenerate into a circus atmosphere with the proceedings carried on in a large auditorium filled with cheering partisans.

Confrontation and Cross-Examination of Witnesses

The right to confront and to cross-examine witnesses is secured in criminal proceedings by the Sixth Amendment to the United States Constitution. Since student disciplinary proceedings in higher education have not been deemed criminal proceedings, there is no general right to confrontation and cross-examination of witnesses.

Right to Counsel

The United States Supreme Court has recently extended the right to counsel to juvenile proceedings in cases where the juvenile may be committed to an institution. This right to counsel has not been extended to student disciplinary cases. The Court specifically ruled such in Barker v. Hardway.[27] Both the Federal Court of Appeals and the United States Supreme Court affirmed Barker v. Hardway without an opinion.

However, in French v. Bashful the Court ruled that where a state supported university proceeded through counsel at the disciplinary proceeding, the student defendants were at a great disadvantage by being denied counsel.[28] The Court did not extend the right to counsel to all students in every disciplinary proceeding, but it did distinguish this case and the unusual circumstances therein. It should be pointed out that in most of the court cases involving student diciplinary proceedings, the students have been given the right to counsel.

Self-Incrimination

There is no general rule that a person subject to disciplinary proceedings in higher education can refuse to answer questions under any and all circumstances.

In Ferutani v. Ewigleben the Court ruled that college officials are not compelled to allow students charged with unlawful actions on campus to remain in school or to postpone any expulsion hearings pending completion of state criminal proceedings even though the students may express a fear of loss of the Fifth Amendment's self-incriminating right in the proceedings.[29] The Court stated that adequate self-incriminatory rights would prevail in any subsequent criminal trial resulting from testimony given at the expulsion hearings.

Rules of Evidence

There are no precise rules of evidence to be followed in student disciplinary proceedings. Rules of evidence which apply in criminal proceedings, such as the hearsay rule, are not applicable. Courts have not set forth specific rules, nor are they likely to do so.

Trial by Jury

Since there has been no declaration by any court that student disciplinary proceedings constitute any manner of criminal proceedings, there is no right to a trial by jury. The concept of a trial by jury incorporates the idea of judgment by one's peers. Certainly, allowing students to constitute a part or all of a disciplinary committee is left to the individual college or university unless prohibited by law.

Interim Suspension

Many colleges and universities have felt the need to employ an interim suspension of students in order to maintain order and freedom on the campus. The rationale for such suspension is that the

continuing presence of the student on campus constitutes danger to that individual and/or others or property. There must be a quick hearing, probably within one to three days, in order to allow the student an opportunity to show that his presence does not constitute a danger.

Only the facts in each case can determine if it is actually impossible or unreasonably difficult to hold a preliminary hearing. It is clear, however, that a preliminary hearing must be held at the earliest practical time. [30, 31]

It is not my assignment today to try to give legal trends for the future but I must say that we should get our house in order before further disorder takes place. Youth is the age of rebellion. Young people generally see only the absolutes--the total rightness or wrongness of any situation. They find it hard to see any middle ground. They see the abundance of hypocrisy today in their own families, their parents, as well as in government and in our educational institutions.

They see the parent with a cocktail in one hand and a cigarette in the other telling them not to experiment with drugs. They see in educational institutions an outward declaration of dedication to the student but they also see how the individual gets lost in the shuffle, becoming only a number to professors who are dedicated to their research and publication (since this is what determines professional rewards in all too many instances).

Up to this time there have been confrontations between students and administrators. I am confident, in my own mind at least, that there will be increasing confrontations on campus between students and faculty concerning the area of instruction and arbitrary student evaluation. And academic freedom will indeed be examined with the same scrutiny as has been given administrative policies and decisions.

Up to just recently educational administrators were involved in court action as a result of students asserting their real or alleged constitutional rights. However, today if administrators allow material disruption to occur on campus without an effort to maintain order and freedom or if the institution is allowed to be closed as a result of pressure exerted they should prepare for court suits against them for abdication of their responsibility. Faculty members should also prepare for suits against them for abdication of their responsibility in the classroom.

Individual students and student organizations such as the Young Americans for Freedom are ready to seek court orders to force institutions to maintain order and freedom on campus. Most of these suits are for breach of contract and under the 1871 Civil Rights Act which makes it possible for persons to obtain relief in federal courts when their constitutional rights have been wrongfully denied by state and local government officials when acting in their official capacity.

III. CONCLUSION

We must take a real hard and honest look at our society and its needs, our institutions and their potential for meeting those needs, and regain our perspective. Certainly our society has its faults and shortcomings--I know of none that is without any. Certainly there is much to be done. Education can and should do much. It cannot do anything constructively over the long haul if it becomes politicized and allows the free marketplace of ideas to be stifled.

Anarchy is not the answer--even if our society were the freedom devouring animal that some of the militants preach, to simply replace that animal with another one equally ferocious is no answer. What is the answer for higher education? What is our proper perspective? What is our proper role in society? So how do we proceed?

First: We should determine the lawful aims and purposes of the educational institution. (Not all institutions will have the same or should have the same purposes.)

Second: We must reaffirm our belief in a free marketplace of ideas--the search for the truth.

Third: We must also reaffirm an appreciation of the worth and dignity of each individual. We must reaffirm our commitment to the student and his development to the fullest extent of his capacity and potential.

Fourth: We should determine the minimum rules, regulations, and standards necessary for the implementation of these aims and purposes. And I stress the minimum number. We should remember that the overwhelming majority of our students are of an age that they claim the same constitutional rights as adults.

This is underscored by the fact that Congress has now given the right to vote in Federal elections to 18 year olds and the Supreme Court has upheld that legislation. So, to promulgate any student rules or regulations not necessary for the implementation of the aims and purposes of the institution is to undertake additional missions and responsibilities that I really do not think any of us would like to assume.

Fifth: We should make these aims and purposes and the rules, regulations, and standards required known to all comers--students, faculty, alumni, taxpayers, all who are connected in any way with the institution.

Sixth: We should be prepared to enforce them, and do it--not harshly or punitively, or vindictively, but forthrightly with fairness and justice, ever realizing that students do not shed their constitutional rights at the campus gate nor do they acquire any special privileges.

To maintain order and freedom on the campus, thus enabling the free marketplace of ideas to flourish, is not only the greatest challenge faced by educational institutions, but is indeed a prerequisite to a free society as well.

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Courts and Colleges:
A TRUSTEE'S VIEW OF STUDENT UNREST AND THE COLLEGE COMMUNITY

HENRY L. BOWDEN is chairman of the Board of Trustees, Emory University, Atlanta, Georgia and a member of the law firm of Lokey and Bowden.

Mr. Bowden holds undergraduate and professional degrees from Emory University. He is currently City Attorney for the City of Atlanta, member of the American Law Institute and Fellow of both the American Bar Association and the American College Probate Counsel. He is past president of the Atlanta Bar Association and the Georgia Bar Association and a past member of the Executive Board of the National Association of College and University Attorneys.

Also a member of the board of trustees of Wesleyan College and Clark College, Mr. Bowden examines in his address some of the concerns trustees have in the face of campus unrest.

I went on Emory's board of trustees in 1947 and did not--expect by death--acquire any of the other titles my friend Rufus Bealle, General Counsel of The University of Alabama, talked about here earlier. The University lawyer died in 1952 and I was the only other lawyer on the board so I became the lawyer for Emory. The chairman of the board died in 1957 so I assumed that position too.

I'm often asked, "Don't you find it difficult being chairman of the board and attorney for the institution as well?" I haven't really because of the fact that I always have felt that the more a lawyer knows about his client's business, the better able he is to do the client's business. Therefore, I have felt that being on the board and chairman of the board has not been a deterrent in my efforts as counselor for the University, but on the contrary, a help.

I hear a lot of the other members of the board of trustees talk about trustee attitudes and some of the things they say concern me and concern all trustees. They're not new and they're not unique to Emory--they are simply attitudes that I think are being voiced by most trustees in most positions of responsibility.

You know, for instance, what has happened at the average college or university throughout the nation in the last several years, and from this you also know what can happen--you know most anything can happen. And when I make any statement here today about what has and what has not happened at Emory, please know that I realize full well that before I get home it could have happened there, too, and may have.

Experience at Emory

But I think we have been fortunate at Emory because we haven't had any violence as it's known generally--that is we haven't had any destruction, we haven't had any strikes; we have had some marching around the campus with placards, we have had an effort to deter people from coming into our cafeteria to eat by forming close lines. We had a group of students disrupt an ROTC class as an aftermath of the Kent State operation.

But, on the other hand, such things as bombings and destruction of buildings we've been free from fortunately and I say a prayer of thanksgiving for that. I think we're going to be increasingly free from them because of the fact that we do have a dean of students, Dr. Thomas Fernandez, who's here today. He's one of the bright things that's come to us at Emory and he's doing an outstanding job and I want publicly to state today how proud we are of him and what he is doing there at Emory.

The Commission on Higher Education of the Carnegie Corporation made a statement which I want to read to you. It's real short. They're talking about the difference between dissent and disruption, and I think

they are clear--these differences are. Dissent, they say, which must be protected respects the rights of others. It relies on persuasion, it is consistent with the democratic processes of free speech, assembly, and petition.

Disruption is something which must be ended because it disregards the rights of others. It relies on coercion or violence. It destroys the legitimate democratic processes.

When we are talking about unrest on campus today, we're not necessarily talking about violence; we're talking about things which may be less than violent, but which may nevertheless give an indication that there is a feeling of unrest within the student body, a feeling of concern. There is a certain ferment going on.

I. WORRIES OF TRUSTEES

Some of the things that are particularly bothersome to the trustees at Emory were mentioned in the morning session. For instance, the student newspaper. What happens if a libelous story appears in the student newspaper? Or, the student newspaper accuses some member of the community unconnected with the University with being something less that virtuous--a communist or what have you. What does that do to the University?

Are we subject to suit--I know we're subject to suit, everybody is--but the question is whether or not you can be a subject to a successful suit, whether the members of the board of trustees or the university itself can be held liable for this sort of libelous statement appearing in a student publication.

Might you require of students that they publish in the student paper a notice that any statements in it represent only the attitudes and opinions of student editors and do not reflect the position or attitude of the institution, any of its faculty, or members of the board of trustees? Would that be of any help to you? Does the fact that we provide a place for them to publish this paper, that we take money and support student activities (which includes the publication of this paper) make us such a party to the publication of libelous statements as would subject us to damages if this were proven?

I've looked at the case law and there is no clear-cut case law except that which you'll find outside the area of university operations.

Censorship

This is one of the things that's bothering our trustees. One of our men said, "I think we ought to censor the student newspaper." But once you get into censorship then if anythings gets by the censor you're certainly a part of it. Censorship's not the answer anyway. Another said, "Cut off their funds." Well, you can't do this.

What we've done instead is ask the President to call the editors in and sit down with them and tell them this: We're not censoring your paper. You've got freedom to write and publish as you see fit. But you are in a responsible community where we are seeking truth and you are an articulate person, able to write effectively, and we think you are not living up to all that is your potential. We think that you could improve very much on what you are doing with this paper by being more objective, by being less vicious in what you are saying.

I think it has shown some results. As a result, some of the students have started a second paper because they didn't like the first and in a student poll as to which of the two papers they preferred they selected the second.

Another thing that bothers us as trustees is the fact that the students want to get in the act, they want to be a part of the board of trustees. They want membership. They also want to be a part of faculty committees and determine what is to be taught.

We think that there are three separate branches of operation at Emory--the students, the faculty, the board of trustees. Each, if it fulfills its greatest function, will do yeoman service in relation to the University and will help mold it into something that is effective.

There's no merit in having students on the board of trustees. We think this is unattractive and ineffective. We agreed, rather, that we would not let students be

on the board of trustees and as an offsetting balance, we would not send any trustees to the student government meeting! Now, whether or not the faculty wants to let them sit in on their committees--I'm certain they've done it under pressure--but I think they have let them do it. I think it's ill advised, but, at any rate, this is their decision. This is something that bothers us as trustees.

Tendency To Destroy

Another thing that bothers trustees is this willingness--not necessarily at our institution--but at institutions throughout the country, a willingness to destroy simply because one disapproves. When students marched into an ROTC class and took over and said "this class is stopping" and the faculty did not move immediately to punish these students, we feel that there was a dereliction of duty, that there was a failure on the part of somebody to do that which should have been done and which should have been done promptly, because if students can take over an ROTC class, they can take over a history class or an English class or a chemistry class.

It came to the attention of our board of trustees that six weeks had elapsed between the time of this incident and the time of any action being taken. It was determined that it was not the lack of desire on the part of the faculty to do something but simply because the very complicated nature of the whole disciplinary procedure caused the operation to bog down. We felt that something should be done and we asked the President to do something about it.

The President has done something about it--he's gotten the dean of students to superintend the organization of new codes of conduct enunciated by each of the several schools within the University because each one has a different problem. You can't have a code of conduct dealing with an 18 year old girl who's up from South Georgia as a freshman that would apply equally to a student in medicine who's married and has three children of his own.

You must have different standards and so we've got different codes for each of the components of the University. Our dean of students has seen that these were done with the students' participation, with the faculty, and the deans in each of these schools. A trustee committee has met with him, gone over and approved them.

You perhaps have heard about tax evasion and tax avoidance. Tax evasion is a bad thing because you've been doing that which subjects you to payment of taxation and through some machinations of yours you evade the payment of these taxes. But, on the other hand, if you observe the tax laws and make your conduct such that it will not involve you in a taxable situation, then you have done what is called tax avoidance which is an entirely proper, legitimate, and right approach.

II. THE EMORY TRUSTEE STATEMENT

We at Emory have felt this and that is what I want to share with you today. We felt that we should take some action to bring about avoidance of student unrest instead of just trying to meet it.

Most boards of trustees say, "Well, we determine broad policies and the administration handles the administrative day-to-day details." But the trouble had been that these boards of trustees, as we saw it, failed to enunciate any policies except on an ad hoc basis--you'd have a crisis and they'd come out with a policy. The next week you'd have another crisis and here would come another policy.

But the policy never was enunciated prior to the incident to which it was directed and we felt that what should be done first, if we're going to expect students to live up to a code of conduct, is announce some policies so that they will be appraised of what is acceptable conduct and what is not. Then if they're in violation, we've got some basis for approaching it with directness and effectiveness.

So our board of trustees prepared and I brought with me a copy of our policy and I'm going to read it to you because it's short. We adopted a statement of policy--it's broad, it's not detailed as

you'll see, but it covers what we think our policy is. (See Appendix A for the full text of the Emory statement.) Simply stated it says something like this: Emory University is an educational institution. It's not a vehicle for political or social reform or action. Some would have you think otherwise, but we are not an agency for social action or political action.

Emory appreciates and endorses the fundamental right of dissent and fully protects and encourages the fair and reasonable exercise of this right by individuals within the University. Because the right of dissent is subject to abuse, the board of trustees and the president publish this statement to make clear the policy concerning such abuse.

First: Individuals associated with Emory properly represent a wide variety of viewpoints and attitudes. The University fosters the free expression and interchange of differing views through written and oral discourse and logical persuasion.

People ask me, "How does Emory stand on Viet Nam? What does it think about Viet Nam?" Emory doesn't think about Viet Nam--the people who go to Emory, some are hawks and some are doves. If you took a vote of the theology student body, they'd feel or express themselves one way; the dental school may think another way. So if I try to answer them and say, "Emory University feels so and so about it," that's an improper assumption on my part.

Dissent

Second: Dissent to be acceptable must be orderly and peaceful and represent constructive alternatives reasonably presented. That is, don't just come up and say, "We don't want so-and-so anymore." Say all you want to about that, but also say "What we want is this." And until a reasonable alternative is presented to that which we have, don't knock it. That's our basic concept.

Third: Coercion, threats, demands, obscenity, vulgarity, obstructionism, and violence are not acceptable. They're just not acceptable and if you're engaging in these, you're not an acceptable student. You can dissent, you can dissent in orderly ways, but not through the use of any of these things I have just spoken of.

Fourth: Demonstrations, marches, sit-ins, or noisy protests which are designed or intended to or which do disrupt normal academic and institutional pursuits will not be permitted. You can march around the campus carrying a sign saying most anything you want to; you can have a meeting; you can make speeches; but, if these meetings, if this placard carrying is accompanied by singing and other activity that disrupts normal University procedures where others are trying their best to do that which they came to do--this is not acceptable conduct.

We have not proscribed meetings, we have not proscribed placards, but we have proscribed any effort on the part of a student in the exercise of his rights to deny another student his rights. Classes and routine operations will not be suspended except for reasonable cause as determined under authority of the University President. We're not going to allow the students to vote to see whether we close the University this week. The President may close it when he wishes.

Next, Emory's administrators, faculty, other employees, and students are expected to abide by these standards of conduct in promoting their views--particularly dissent. In other words, these are the things we want everyone to do.

Enrollment At Emory

Next: Persons who are not so inclined (and this is important) should not attend Emory University, nor become associated with the institution, nor continue to be associated with the University. If you don't like it, it's a voluntary thing, don't come. It's just that simple. These are the things we're going to follow; we invite you to come, we invite you to live by them--if you don't like it, then you know in advance what our policies and programs are--stay away. If you're

already there and you find this incompatible with your thinking and attitudes, we think it's reasonable, you think it's unreasonable, we think you'd be more comfortable away. And we invite you to leave--it's just that simple. And I think we have the duty of letting students know just what these things are.

Finally: Academic and administrative procedures of the University will protect individuals in their right of free expression and provide for prompt and appropriate disciplinary action against those who abuse such right. Now by that last statement, I mean that this is not an attempt at setting up student conduct codes but there will be implementations of this broad policy by the passage of student conduct codes which the dean of students and the other deans have worked on and which are now in operation.

Let me go back and say that a lot of the students when they came to school didn't like this board statement because we adopted it in the summertime. They said it didn't give them an opportunity to participate in it. But it wasn't their matter--it was a trustee matter. And in the second place, if we'd adopted it during the year, they'd have said that we had done it because some crisis was involved. We wanted to do it in a vacuum when no school was in operation, and therefore it could not be said to have been directed at any particular violation of any kind.

III. EFFORTS AT COMMUNICATION

Now, I think there are two other items which we are doing, which we have found helpful, and I would pass them on to you and suggest that you give them consideration.

One thing is this: from the trustee standpoint we need to keep open lines of communication with our faculty and with our students. Once every quarter we have arranged for a group of six trustees to have dinner with 12 students.

These students are selected at random, not by the trustees but by the administration. The dean of students makes this selection and picks out persons from each of the several branches of the University. We have dinner together--no holds barred. They can ask anything they wish (we can too) and we'll try to answer them. These meetings start at 6 P.M.; we tell them they are free to go at eight. We never leave at eight, we always go far beyond. There's not a faculty person nor an administrator present, a dean or anybody except 12 students and 6 trustees and they ask everything.

One of these problems that bothers students is tenure; they don't like it. I don't know why, they just don't like it. We talk to them frankly about it. The only thing we won't talk to them about is the salary of anybody who works with the University; that's a matter we think is private and is not subject to public discussion.

But they do question our investment program and our portfolio. They question everything and we give them frank and straight forward answers about it and we've found this to be a most helpful approach to an understanding. This accomplishes that which I think they would like to have accomplished by having representatives on the board of trustees.

But this gives them a much better opportunity to know what's going on than if they were on the board of trustees because the board involves itself with letting the building contracts, with investment in the buying and selling of land, and all these things about which students really don't have any interest and in which they ought not to be involved. But to these other questions they would like to have some answers and we give them.

Meetings With Faculty

The second thing we have is a similar program with our faculty. I attended one of these some days ago and we had four trustees and eight faculty together. We met downtown, had dinner together, sat around the table and talked. We had a most pleasant evening. We didn't do it on the campus; we didn't do it at a private club; we did it at a hotel where

everybody would be on an equal basis and we could sit down and sort of kick things around.

You'd be amazed. I had letters from nearly every one of the faculty present expressing gratitude, appreciation, and a better understanding of the institution all because of an opportunity they had to sit and have a frank discussion with members of their board of trustees. And I'm frank to say that the trustees, each one of them, came to me and said, "Put me on the next one if you don't have somebody else; I enjoyed it; it was great."

We had all kinds of questions asked. For instance, we just put a freeze on salaries at the University. We had to because of money; we haven't got enough money for any raises, so we froze them. The faculty said they didn't like it. They had some men who had been assistant professors who were promoted to associate professors and didn't get an increase in pay. Well, we didn't know this was so. We thought if a man moved from one position to another and that position carried with it a certain higher salary he ought to receive it.

This was the sort of the thing we discussed. They wanted to know why our portfolio doesn't produce more money than it does. And we told them some of the reasons. They understand it when you can tell it to them like this. And we think these discussions are going a long way toward helping us.

Campus Speakers

We've had a lot of criticism on our board about such things as Jane Fonda coming to the Emory campus. Our position is this: we're not going to stop Jane Fonda from coming but we're going to fix some rules which apply to people of this sort when they are invited to come. One of the rules is they must register well in advance so that a place is available and the appearance doesn't conflict with someone else. The second one is, the person who comes has got to be given a ladylike or gentlemanly reception. You cannot shout them down or fail to listen to what they say. You don't have to buy it, but you've got to hear it.

Next--it cannot interfere with anybody else's scheduled performances; and, fourth, you cannot admit off-campus people.

Emory has had Jane Fonda; they've had Stokely Carmichael; they've had Lester Maddox: they've had Strom Thurmond. We let them have whomsoever they wish as long as that person is talking to the students.

I think when you tell students, "You can't hear this and you can't hear that," they've got a legitimate reason for complaining. But I do think that when you let them listen, you've got a right to put around their hearing certain restraints and regulations which are reasonable and which would apply to all persons coming on to your campus.

IV. CONCLUSION

Before I close I want to make a comment or two about some things that were said in the session this morning. It is true that we as a private university are not subject to the 14th amendment as stringently as the public institutions are. But on the other hand, we, -- and I know I speak for the other private institutions represented here--pride ourselves that we are giving due process in our procedures, not under the lash of a 14th amendment requirement, but under the enlightened approach of wanting to be fair with everybody, because this is the way men and women want to live together.

And a part of that is to give students courteous hearings and to allow them to have somebody represent them. The fact that we are approaching this matter in this way, I think speaks well for the private institutions--that we are not bound by some imposed obligation, but that we are upholding an obligation which is placed on the public institution as a desirable course of conduct to which we wish to be bound voluntarily.

I hope that these things I say as a trustee are helpful to you. We've found these suggestions have worked for us and I recommend them to you.

Courts and Colleges:

REMEDIES FOR STUDENT PROTEST

FRED D. GRAY is senior member of the law firm of Gray, Seay and Langford, Tuskegee, Alabama and Member, House of Representatives, State of Alabama.

Mr. Gray holds degrees from Alabama State University and Western Reserve University. He is City Attorney for the City of Tuskegee, Alabama, Legal General Counsel for Tuskegee Institute and Attorney for Alabama State University. He is a member of the Alabama Bar, Ohio Bar, and American Bar Associations.

Noted defender of civil liberties and the rights of students, Mr. Gray in this paper identifies several courses of action open to a college or university seeking to protect itself against violence and disruptive activities yet preserving the freedoms of the individual.

"THEY DISRESPECT THEIR ELDERS, THEY DISOBEY THEIR PARENTS, THEY RIOT IN THE STREETS INFLAMED WITH WILD NOTIONS, THEIR MORALS ARE DECAYING. WHAT IS TO BECOME OF THEM?" One may believe that these were spoken by a college or university administrator on one of our campuses in 1971 with reference to students. However they were spoken by Plato, some 300 years before the birth of Christ.

These words were written at a time which contemporary man sometimes regards as the "Golden Age" of respect of student for teacher.

Golden Age Of Respect

Just as in the "Golden Age" of respect, problems arose which disturbed the great educators and society leaders of that day. We, today, are also faced with unrest and discontent among our young people. They are asking pertinent questions as to issues confronting our society. The issues which they raise are, for the most part, legitimate areas of inquiry. The problem, however arises when students choose, as their forum, college and university campuses. I must readily admit that the students on our campuses are better informed than ever in the history of our universities. There is an astonishing and acute awareness on the part of these students as to the nature of their environment and their hopes, dreams, and desires for making our society a better place in which to live.

We must understand this awareness on their part and deal with it in a positive manner.

However, we must recognize that student activism may disturb and disrupt the normal educational processes of our universities. The question then is not so much a distinction between legitimate grievances and unreasonable grievances as it is a distinction between the methods or tactics employed to express grievances. That is to say, whether real or fancied, when the expression of grievances results in disruption of the business for which a university exists, a crucial point has been reached.

Before going into remedies for student protest, I feel a distinction must be made between legitimate student dissent and disruption. Dissent lies at the foundation of a university, and organized dissent and protest are basic rights which must be protected on campus.

Disruption, on the other hand, is defined as an activity which interferes with the rights of others, is based on

coercion and sometimes violence, and is utterly contradictory to the values and purposes of the campus.

Protest and Dissent

Protest and dissent can take one of two different forms: one that does not interfere with other student rights or the orderly administration of the university; one that curtails the orderly operation of the university. This brings us then to the remedies that are available to the college or university when such student protest tends to disrupt the normal functions of the institution.

I will discuss the following remedies for student protest:

1. Injunctive Process
2. Suits by taxpayers and students not participating in the unrest
3. Arrest--police, state troopers, or national guardsmen
4. State and federal legislation as a remedy for curbing student protest.
5. Status quo remedies

I. INJUNCTIVE PROCESS

During the past few years, the equitable remedy of injunction has emerged as one of the more effective means available to institutions of higher education to cope with disruption and vandalism on their campuses. The efficacy of injunctions received attention in the public press about two years ago when Columbia University successfully used a restraining order to terminate the occupation of two buildings by an SDS group of several hundred persons on May 1, 1968.

In the ensuing years many institutions of higher education, public as well as private, have turned to courts for restraining orders. Their experiences with the injunction have been encouraging.

Advantages

The injunction as a means of quelling campus disturbances has several obvious advantages.

1. An injunction can be obtained quickly in the form of an exparte temporary order. This means that legal compulsion can be brought to bear at the early stage of a building occupation when the occupants are most insecure about their ability to sustain the occupation.

2. The prompt use of an injunction at a disruptive sit-in enhances the probability of ending the occupation without police assistance.

3. The injunction is immediate notice to the trespassers that their conduct is unlawful and is a matter of concern not just to the institution but to the state.

4. The injunction is an eminently fair remedy in its application to campus disturbances. Once the occupiers of the building have notice of the injunction, they may comply with its terms by vacating the premises and avoid being charged with contempt. Punishment for contempt is prompt.

There are several forms of conduct which could possibly be enjoined. They are:

Assembling within or adjacent to university buildings or entrances in such manner as to disrupt or interfere with normal functions conducted in them or to impede ingress to or egress from such buildings.

Broadcasting excessive noise which interferes with the conduct of normal university activity.

Employing force or violence or the threat of force or violence against person or property on the campus, disturbing or interfering with any lawful assembly or meeting of persons or property on the campus.

Remaining within any of the university's academic buildings after their normal closing hour.

The effectiveness of injunctions in terminating major building occup-

ations may encourage a tendency to regard the injunction as a cure-all remedy for all manner of minor campus incidents. If the injunction is to remain a credible tool to deter campus disturbances, its use should be reserved for the infrequent occasions of substantial disruption. It is important to use the injunctive power prudently.

Protect Student Rights

The injunction is not only an effective remedy to be used by the university, but it is of equal use on behalf of protecting students' rights. Therefore, in a case where the university has infringed upon the rights of students to exercise First Amendment rights in an orderly fashion, a court may issue an injunction enjoining the university from interfering with these rights of students.

II. SUITS

There are also suits that may be brought by students, taxpayers, and others against institutions arising out of disruption in educational processes. These suits are brought by students who are not participants in the demonstrations and who claim that their right to an education without the interference of the disruptive students is being denied. They seek to compel the university to keep its doors open and to take whatever action is necessary in order for the university to engage in its normal function of educating students.

III. ARREST

Let us assume that the president of the university, faced on the campus with an unruly, disruptive mob of students and non-student protesters intent on "shutting the place down," and a larger but "uncollected" group both on and off the campus demanding action, decides that he needs the help of outside police.

When the police arrive he quickly learns, if he didn't already know it, that no longer is he in command. He has exercised his discretion to call for their assistance, but the police will direct the police action, presumably with the cooperation of the campus authorities.

If the University decides not to call the police before the disturbance is abated, persons have been injured, property damage has been done, both on and off the campus, and classrooms have been disrupted, then the administration is severely criticized for having failed to curb the disruption and failing to arrest the disruptors.

But the remedy of arrest should be used very sparingly and then only as a last resort.

IV. STATE AND FEDERAL LEGISLATION

Colleges and universities also have available to them various state and federal laws which protect the normal functions of an institution of higher learning. The federal law states that if a student disrupts the normal functioning of the university and is found guilty of that particular violation, he may be denied federal funds for educational purposes. The most pertinent factor, however, is that he must be provided all of his due process procedural rights.

Some states have laws which may be used against student protest that interferes with other students' rights. They, just as the federal laws indicated above, cut off financial aid. The standard in the federal law is "substantial disruption," but some states term it, "an act likely to disrupt" the peaceful conduct of the institution. Other states impose a fine for disruptive activity and damages. There is also the most pertinent remedy of dismissal of the disruptive student.

There are criminal penalities which could be used as remedies for student protest, i.e., the anti-riot provisions of the 1968 Civil Rights Act which pro-

hibits persons from crossing state lines with intent to incite riots could apply. These criminal penalities range from misdemeanors to felonies.

V. A HYPOTHETICAL SITUATION

Now that I have outlined the remedies available to the colleges and universities, it leads to one of the most pertinent parts of this discussion. This is, just when should the university use these remedies, and which remedy should it use. It cannot be over-emphasized that these remedies, as indicated before, should be used as sparingly as possible. The key to solving these complex problems of our institutions lies not in a court of law or the legislature but rather we must look to the overall import of a sharing relationship that seeks to embrace, as well as to actively engage, the support and cooperation of all segments of the academic community. This must be done to assure all parties that the university is concerned with and will listen to the problems of its students and seek an amicable solution to them. Let us examine briefly a situation which could easily arise on a college campus today.

ZIP, a local chapter of a national student organization, believes strongly in Peace Corps programs and strongly opposes the war in Vietnam. They feel the placement office at Alabama University is not giving the Peace Corps recruiters a "fair shake," they decide they should protect the interest of the Peace Corps by seeking to close down the placement office because more appointments are made for Army recruiters than Peace Corps recruiters.

ZIP sends one of its representatives to discuss this issue with the placement officer after writing a letter to him concerning the atrocities of the U. S. Army and the goodness of the Peace Corps. The placement officer ignores the letter, but listens to the ZIP student relate his complaint against the placement office. The placement officer does not respond to the letter or the conference.

ZIP allies with PAL, the Protest Action League, a local University group, in an attempt to expose the problem of the placement office. They organize a picket line to carry signs 24 hours daily calling the placement office an "Arm of the CIA and FBI." This does not interfere with the normal activities of the placement office.

The leaders of ZIP and PAL decide to take more affirmative action and block both students seeking interviews and persons who want to interview the students. They also decide to block university personnel from entering the building for work on the day the U. S. Army interviewer is on campus. Only persons wanting to see the Peace Corps representatives are allowed to enter the building.

The Governor calls the President of the University and says, "get those radical students straightened out or I will have both the State Troopers and National Guardsmen down in 48 hours." Concerned parents and alumni tie up telephone lines asking what the problem is down there.

You can readily see the conflict before the University administrators and the pressures from all segments of society beginning to mount.

The question then becomes how to solve the problem in the best interest of the University, students and the State.

Negotiation

Our first option for consideration is "negotiation with the students." There is the fear of losing initial contact with the students or what is termed a "breakdown in communications." Contact between the students and administration should be maintained as long as possible with the intent to settle the matter through positive, aggressive and honest negotiations giving all interested parties a voice in reaching a settlement.

If negotiations fail to settle the situation and restore the normal functions of university life, we must then explore our other remedies.

Arrest

Another remedy we may consider is arrest. This poses a serious threat to the invasion of the campus by "outsiders" and should be given the utmost thought and consideration. The thought of arrest by police, State Troopers, or National Guardsmen serves to increase the severe threat of polarization of the students against the administration and could create a worse situation.

Therefore, even though we may feel that arrest is the most expedient way of solving our problem, it may not be the most practical in the long run for the repercussions may be too great a burden for the college community to bear. Arrest then should only be used as a last resort in the process of reaching an amicable solution to our complex problem.

There is the possibility that some students not participating in the disturbance could file suit to claim that the university is not fulfilling its portion of the contract and not being sufficiently expeditious in removing the demonstrators thus breaching the rights of other students. The university, however, has no control over this matter, since the student is bringing the action.

Injunction

Finally, we come to injunctive relief. Either a student who is being kept from his interview or the university which the students are disrupting have a cause of action. They may bring their action in the circuit court or the federal district court, depending on the nature of their injunction.

ZIP and PAL, in our example, could be named as defendants in the injunctive order along with all students participating and a copy could be served on them as they occupied the building. This gives them the opportunity to leave without arrest or further disruption. It also protects the university and other student interests by restraining the students from further disruption pending a final hearing on the injunction. If students fail to obey the court order they would be subject to contempt.

The injunction meets the immediacy of the matter and may have positive long range results. It distributes the burden of responsibility to all parties. It is, in my opinion, one of the better solutions to a matter when negotiations have been futile.

VI. IMPLICATIONS FOR ADMINISTRATORS

As college administrators, you would do well to urge restraint in the use of these court remedies and to encourage sympathy and understanding towards both the militant activists and those less involved students who desire mainly to pursue their studies. Repressive measures will only escalate disturbances into more serious confrontations and will serve to alienate further those rebelling against society. Armed "peace" officers on a campus create the possibility of another Kent State or Jackson State tragedy.

The students who are currently attending colleges and universities throughout America are demanding a greater part in the administration of the institutions where they matriculate. The students are demanding that they become a real part of not only the academic community, but also of the community where their institution is located. These students are interested in and are desirous of becoming a part of the political structure and as such are interested in becoming directly involved in political campaigns for various candidates.

A very good example of this type involvement occurred on the campus of Tuskegee Institute, Alabama during my recent election for a place in the Alabama House of Representatives. After the tragedy at Kent State there was a movement on foot on our campus for some type of demonstration or some other manner of expressing resentment for the lives of the students that were taken at Kent State. Then the tragedy at Jackson State occurred and again there was a question as to some type of appropriate action to be taken in order to show resentment for these occurences.

These students decided that the most

effective way to express their resentment of these tragedies in a tangible way was to assist in electing a member of their race to the Alabama Legislature, an occurrance which had not taken place since Reconstruction The result was that they have been able to do something real and constructive and to do something that will not only prove that they are concerned about this nation, but will probably serve as a beginning of creating a stronger working relationship between the academic community, and the community where the Institute is located.

The best remedy for student dissent is to challenge them into being included in some worthwhile community project and to use all reasonable efforts to solve the causes of the demonstrations.

VII. CONCLUSION

Our remedies can no longer come solely from within or without the university. A true partnership of the university, the state, and the student must be established to solve the many problems that have already and will in the future confront our students, our universities and our entire society.

Therefore, as administrators of colleges and universities, you cannot ignore legitimate issues of dissent and protest. But, if necessary to carry out your basic functions it is mandatory for you to use judicial remedies, do so very sparingly and only in extreme cases.

APPENDIX A

STATEMENT OF POLICY RELATIVE TO DISSENT ADOPTED BY BOARD OF TRUSTEES AND PRESIDENT OF EMORY UNIVERSITY JULY 1970

EMORY UNIVERSITY is an education institution; it is not a vehicle for political or social action. It appreciates and endorses the fundamental right of dissent and fully protects and encourages the fair and reasonable exercise of this right by individuals within the University. Because the right of dissent is subject to abuse, the Board of Trustees and the President of Emory University publish this statement to make clear policy concerning such abuse:

(1) Individuals associated with Emory properly represent a wide variety of viewpoints and attitudes; the University fosters the free expression and interchange of differing views through oral and written discourse and logical persuasion.

(2) Dissent, to be acceptable, must be orderly and peaceful, and represent constructive alternatives reasonably presented.

(3) Coercion, threats, demands, obscenity, vulgarity, obstructionism and violence are not acceptable.

(4) Demonstrations, marches, sit-ins, or noisy protests which are designed or intended to or which do disrupt normal academic and institutional pursuits will not be permitted.

(5) Classes and routine operations will not be suspended except for reasonable cause as determined under authority of the University President.

(6) Emory administrators, faculty, other employees, and students are expected to abide by these standards of conduct in promoting their views, particularly dissent.

(7) Persons who are not so inclined should not attend Emory University nor continue to be associated with the University.

(8) Academic and administrative procedures of the University will protect individuals in their right of free expression, and provide for prompt and appropriate disciplinary action against those who abuse such right.

APPENDIX B

SELECTED BIBLIOGRAPHY ON INSTITUTIONAL GOVERNANCE AND CAMPUS UNREST

This bibliography was prepared by the American Council on Education for administrators and others in the academic community who need to familiarize themselves with the current literature on institutional problems stemming from campus unrest and disruption. It includes other more extensive bibliographies, articles from law journals, statements, recommendations, studies and reports from a variety of organizations and special committees. All materials listed are recent, published in 1968 or thereafter. The bibliography has been kept brief, but the major writings in the legal area are covered, either through specific mention or through inclusion in the other bibliographies that are included. Three major areas are covered: statements and reports on student rights, dissent, and campus unrest; student codes and participation in governance; and legal problems of governance and student-institutional relations.

Statements and Reports on Student Rights, Dissent, and Campus Unrest

The Report of the President's Commission on Campus Unrest by the President's Commission on Campus Unrest. Government Printing Office, Washington, D.C. 1970. 537 pp. $2.50. GPO Pr 37.8:C15/R29.

Includes the main report, the special reports on Kent State and Jackson State, and an extensive, annotated bibliography.

Survey of Campus Incidents as Interpreted by College Presidents, Faculty Chairmen, and Student Body Presidents, a report submitted to the President's Commission on Campus Unrest under a contract with the Urban Institute. Availability will be announced in Council's *Higher Education and National Affairs.*

Campus Tensions: Analysis and Recom endations, Report of the Special Committee on Campus Tensions. American Council on Education, One Dupont Circle, Washington, D.C. 20036. April 1970. 61 pp. Single copies free. Ten copies, $5.00; 25 copies, $10.00.

The report discusses how different constituent groups of the campus community–students, faculty, administrators, and trustees–perceive the problems of higher education. Among the recommendations: (1) the processes of academic governance should be seen as "fair" by all academic groups; (2) methods of communication–rumor centers, centralized files, ombudsmen–must be established; (3) joint administrative-faculty-student committees should be established, whenever possible, to promote effective decision making; (4) all members of the academic community should have a "shared commitment . . to the principle of institutional self-governance" and its accompanying responsibilities.

Perspectives on Campus Tensions. David C. Nichols, editor, American Council on Education, One Dupont Circle, Washington, D.C. 20036. 1970. 219 pp. $3.50 per copy.

Includes 20 papers prepared for the use of the Special Committee on Campus Tensions in its deliberations prior to the issuance of its report. Papers arranged under five sections: The New Situation; Where the Students Are; What About Faculty?; Administrators–in the Middle; A New Role for Trustees? Among the contributors are Kenneth Boulding, Kenneth Keniston, Samuel Proctor, Clark Kerr and Steven Muller.

Report of the American Bar Association Commission on Campus Government and Student Dissent. American Bar Association Commission on Campus Dissent, American Bar Foundation, 1155 East 60th Street, Chicago Illinois. 1970. 36 pp. Single copies free.

This commission–composed of practicing lawyers, higher education leaders, and behavioral scientists–has drafted legal standards and procedural guidelines for campus administrators. The purpose of these guidelines is "to accommodate valid student dissent and facilitate student participation in campus affairs while preserving ordinary educational processes." The report makes general recommendations in two sections: "The Protection of Freedom of Expression" and "The Maintenance of Order with Justice."

The commission may continue its work with an examination of student participation in campus government.

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Joint Statement on Rights and Freedoms of Students. Copies available from the Executive Director, Joint Commission on Rights and Freedoms of Students, Suite 500, One Dupont Circle, Washington, D.C. 20036. First 20 copies free. Beyond that number, charge of $2.50 for multiples of 25.

See also: "Administrator's Handbook: Understanding the Joint Statement on Rights and Freedoms of Students," special insert, *College and University Business,* July 1968. Available from *College and University Business,* 1050 Merchandise Mart, Chicago, Illinois 60654. $1.00 per copy.

Includes the Joint Statement and the comments or caveats of the educational associations which have endorsed the Statement.

A Declaration on Campus Unrest. Ad Hoc ACE Committee, American Council on Education, One Dupont Circle, Washington, D.C. April 1969. 3 pp. A limited supply of free single copies available.

Statement formulated by a committee of administrators, trustees and foundation officers, and subsequently approved by ACE Board of Directors.

Student Unrest. Statement of the Board of Directors of the Association of American Colleges, July 1968. (Out of print)

Academic Freedom and Civil Liberties of Students in Colleges and Universities. American Civil Liberties Union. 156 Fifth Avenue, New York, New York 10010. April 1970. $.75 per copy. 40% discount with purchase of 25 copies or more.

This revision of the 1956 ACLU statement includes several sections which touch on the issue of governance: "The Student as a Member of the Community of Scholars"; "The Student's Role in the Formulation of Academic Policy"; "Extracurricular Activities"; "Personal Freedom"; and "Regulations and Disciplinary Procedures."

Student Freedoms and Responsibilities. A working paper. American Association of State Colleges and Universities, One Dupont Circle, Washington, D.C. 20036. A limited supply of single copies available from AASCU.

The pamphlet is intended as a guide to member institutions in the area of student freedoms and responsibilities.

Student Rights and Responsibilities. J. W. Blair, editor, Association of Student Governments, 2013 N. Street, N.W., Washington. D.C. 20036. 1968. $2.50 per copy.

This collection of essays, taken primarily from law journals, was assembled primarily to inform students.

Student Codes And Student Participation in Governance

Should Students Share the Power? A Study of Their Role in College and University Governance. Earl J. McGrath, Temple University Press, Philadelphia, Pennsylvania. 1970. 124 pp. $2.45 per copy.

Constructive Changes To Ease Campus Tensions. Office of Institutional Research, National Association of State Universities and Land-Grant Colleges, One Dupont Circle, Washington, D.C. 20036. January 1970. 54 pp. $2.00 per copy. Supplement will be released this fall.

This study surveys governance changes at 90% of the Association's member institutions. The changes are divided into two broad areas and listed by state. The areas are: (1) Student Participation in University Policy-Making, which includes such categories as institution-wide committees, boards of trustees and planning; and (2) Policies and Procedures on Conduct and Disruption, which includes codes, police policy, firearms, discipline, etc.

Student Participation in Academic Governance. Lora H. Robinson and Janet D. Shoenfeld, ERIC Clearinghouse on Higher Education, ERIC Document Reproduction Service, National Cash Register Company, 4936 Fairmont Avenue, Bethesda, Maryland 20014. March 1970. 26 pp. No. ED 035 786. $.25 microfiche. $1.50 photocopy.

Includes an annotated bibliography documenting the nature and extent of student participation and a compendium of recent institutional change. The compendium supplements the NASULGC report. Subject headings: survey of current practices; surveys of attitudes; arguments for, against, and about increasing student participation; hypothetical models of governance; methods of increasing student involvement; institutional proposals to increase student involvement or establish new governance structures; addition of students to existing bodies; formation of new committees; new governance structures.

"Student Unrest and the Role of Student Participation in Institutional Government," Julian H. Levi, *The College Counsel,* Vol. IV, No. 2, 1969. pp. 23–43.

Model Code for Student Rights, Responsibilities and Conduct. Committee on Student Rights and Responsibilities, Law Student Division, American Bar Association, 1155 East 60th Street, Chicago, Illinois. May 31, 1969. 15 pp. Single copies, $2.00. Additional copies, $1.00 each.

Student Conduct and Discipline Proceedings in a University Setting. New York University School of Law, August 1968. See Part II, Number 3, for availability. No. HE 001 208. $.25 microfiche. $2.00 photocopy.

A student conduct code prepared cooperatively by students and faculty. Knowledgeable observers consider it an excellent model.

Governance: Compendium Series of Current Research, Programs and Proposals. ERIC Clearinghouse on Higher Education, One Dupont Circle, Washington, D.C. 20036. May 1970. 23 pp. Limited supply of free single copies available from ERIC Washington office. For later availability, order from National Cash Register Co., 4936 Fairmont Ave., Bethesda, Md. 20014. $.25 microfiche. $1.35 photocopy.

A carefully annotated compendium describing current projects, publications, reports, and recommendations. Some of the materials listed are already available. Anticipated publication dates are given for studies now in progress.

Legal and Security Problems of Governance And Student-Institutional Relationships

Procedural Due Process and Campus Disorder: A Comparison of Law and Practice. Reprint from the *Duke Law Journal*, Volume 1970, No. 4, pp. 763–818. Available from *Duke Law Journal*, Duke University School of Law, Durham, North Carolina 27706. $1.50 per copy.

A report of a project undertaken by Duke Law School to compile and compare the various procedural systems developed throughout the American college and university community and to compare the actual practices discovered. A survey was conducted to identify institutional regulations and uses being made of the regulations. A separate section on "The Private University and Due Process" is included as well as a selected bibliography, a sample questionnaire, and a summary of survey results.

"The Constitution on the Campus," Charles Alan Wright (Oliver Wendell Holmes Lectures, Vanderbilt University School of Law, April 1969), *Vanderbilt Law Review*, Vol. XXII, No. 5, October 1969. pp. 1027–1088. Available through your library.

"Injunctive Control of Disruptive Student Demonstrations," Joseph Herman, *Virginia Law Review*, Vol. 56, Spring 1970. pp. 215–238. Available through your library.

"The Use of Injunctions Against Campus Disorders," National Association of College and University Attorneys Report to the American Council on Education, *The College Counsel*, Vol. IV, No. 2, 1969. pp. 1–6.

Reports on an institutional survey of uses made of the injunction, and institutional willingness or reluctance to use injunctions.

"The Changing Legal Relationships Between Students and Universities," Wallace F. Caldwell, *College and University*, Vol. 45, No. 3, Spring 1970. pp. 245–265. Available through your library.

Freedom and Order on Campus, Otis A. Singletary, American Council on Education, One Dupont Circle, Washington, D.C. 20036. September 1968. 16 pp. Very limited supply of single copies available from ACE.

Due Process in the Student-Institutional Relationship, Thomas C. Fischer, American Association of State Colleges and Universities, One Dupont Circle, Washington, D.C. 20036. August 1970. $2.50 per copy.

This paper deals with procedural due process under the following headings: the meaning of due process; the legal relationship between the student and the institution; the present state of disciplinary procedures within the academy; developing a campus adjudicatory system; and miscellaneous issues. An excellent annotated bibliography covers the writings and legal decisions which the author believes to be essential to an administrator's comprehension of current developments in the student-institutional legal relationship.

The Legal Aspects of Student Dissent and Discipline in Higher Education, D. Parker Young, Institute of Higher Education, University of Georgia, Athens, Georgia. 1970. $1.50 per copy.

Briefs of Selected Court Cases Affecting Student Dissent and Discipline in Higher Education, Donald D. Gehring and D. Parker Young, Institute of Higher Education, University of Georgia, Athens, Georgia. 1970. $1.00 per copy.

"Legal Aspects of Student-Institutional Relationship," *Denver Law Review*, Vol. 45, Number 4, Special 1968. Available through your library.

College Law Bulletin (monthly), U.S. National Student Association, 2115 S Street, N.W., Washington, D.C. 20008. $7.00 annually.

This well-done newsletter covers a wide range of legal problems of concern to institutions. The May 1970 issue (Vol. II, Number 9) summarizes the legal actions resulting from the Student Strike in May. The outcome and background is given for each case. Procedural due process cases and cases resulting from dormitory residence requirements are also included in the May issue.

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The College Counsel (periodical), National Association of College and University Attorneys, 625 Grove Street, Evanston, Illinois 60201. Available through membership in NACUA.

Many aspects of institutional legal problems are covered in this publication.

Campus Unrest: Dialogue or Destruction? Proceedings of the IACP Workshop for State Police Officials and Campus Security Directors, The University of Nebraska, Lincoln, Nebraska, May, 1970, Richard Kobetz and Carl W. Hamm, editors, International Association of Chiefs of Police, 1319 18th Street, N.W., Washington, D.C. 20036. 1970. 160 pp. $3.50 single copy. 5% discount for 2–25 copies. 10% discount for 26 or more.

These proceedings of a workshop for law enforcement personnel on the problems associated with campus unrest, disorder, and violence include papers on police relationships with the campus, the creation of a secure campus environment, psychological methods and considerations in police personnel administration, and the role of the National Guard in campus disorders. An appendix contains examples of campus regulations and disciplinary procedures and a statement of police responsibilities, attitudes, and guidelines for action.

Higher Education in the States, Volume 1, No. 7, pp. 85–108. Newsletter of the Education Commission of the States, 822 Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80203. Single copies and quantity requests up to 25 free.

This issue reports in detail on legislation enacted by state legislatures during the last two years relating to student, faculty, and campus unrest. Information is given on state-by-state basis providing background on bills introduced and explaining what happened in each state, whether or not legislation was passed or introduced.

Fifth Revision
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ABOUT THE INSTITUTE OF HIGHER EDUCATION RESEARCH AND SERVICES

The Institute of Higher Education Research and Services is part of the expanding public service program of The University of Alabama.

The dramatic growth of post-secondary education opportunities in the State and region calls for new and supportive responses on the part of all public universities. The Institute is one of several ways in which this University is applying itself to the needs of the post-secondary education community. Formation of IHERS offers tangible evidence of the University's commitment to provide continuing assistance and leadership in higher education.

Purposes. The basic goal of IHERS is to serve as a focal point for University efforts to assist the general development of higher education. Particular attention is given to the State of Alabama and the Southeast.

Specifically, Institute goals are to:

- conduct studies and issue reports of value to the state and region
- develop and implement cooperative relationships with other institutions and agencies
- plan and coordinate leadership development programs for faculty members, administrators, educational specialists, trustees, and other personnel
- provide consultant services

Programs. As an assisting institution the University, through the Institute, is engaged in the implementation of Title III grants under provisions of the Higher Education Act of 1965. These projects include faculty and administrator development, curriculum reform, and new strategies for instruction, student services, and other activities. IHERS plans and administers personnel development projects supported by private sources and public agencies.

The scope of the Institute's work is as broad and varied as higher education itself. While ready to be of service to all types of post-secondary institutions and their personnel, IHERS is especially sensitive to these needs:

- institutions adapting rapidly and creatively to change
- newly established institutions
- developing institutions
- junior and community colleges
- new college-going populations and disadvantaged learners
- newly appointed faculty members, educational specialists, and administrators